

EXHIBIT 2

David Nolte

1 IN THE UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4 KEVIN RISTO, on behalf of)
 himself and all others)
5 similarly situated,)
)
6 Plaintiffs,)
) CASE NO.
7 vs.) 2:18-cv-07241-CAS-
)
8 SCREEN ACTORS GUILD-AMERICAN) PLA
 FEDERATION OF TELEVISION AND)
9 RADIO ARTISTS; a Delaware)
 corporation; AMERICAN)
10 FEDERATION OF MUSICIANS OF THE)
 UNITED STATES AND CANADA, a)
11 California nonprofit)
 corporation; et al.,)
12)
) Defendants.
13 _____)

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Tuesday, April 27, 2021

Remote videotaped deposition of DAVID NOLTE,
conducted at the location of the witness in
Los Angeles, California, commencing at 9:08 a.m. and
ending at 4:03 p.m., on the above date, before
SHARI BOLTON, CSR 9291.

David Nolte

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David Nolte

1 A Well, I don't have a good count. If someone
2 told me it was 200 times, that would not surprise me,
3 but I don't have a count.

4 Q Okay. What types of clients did you have at
5 Anderson?

6 A We would work for both plaintiffs and
7 defendants. Most of our clients were corporations or
8 very well-heeled individuals.

9 Q Okay. You founded Fulcrum Financial Inquiry
10 in -- I'm sorry. You founded -- hold on.

11 Did you work on -- with IP types of cases
12 when you were at Anderson?

13 A Yes.

14 Q What percentage of your client load was IP
15 clients?

16 A I -- I don't have a percentage in mind. I
17 can tell you that I -- IP work, and there's different
18 types of IP work, but IP work generally was probably
19 my largest single area and that probably continues to
20 be the case now.

21 Q Did you have nonprofit clients when you were
22 at Anderson?

23 A I did.

24 Q Okay. Can you give us an estimation of how
25 many?

David Nolte

1 Q Okay. What are the consequences of having a
2 poor sample selection?

3 A Well, I don't know what "poor" is so I -- so
4 I'm afraid I can't answer the question without knowing
5 what "poor" is. I could substitute my own definition
6 of "poor," but I don't know what you have in mind.

7 Q What are the consequences of having a not
8 statistically significant sample selection?

9 A Then you cannot draw statistical inferences
10 expressed in terms of precisions and confidence
11 levels.

12 Q What are the consequences of having a sample
13 that is not representative of the whole?

14 A Well, then -- then you would have what's
15 commonly called a sample error and so the
16 conclusions -- which, by the way, can happen even if
17 you got a statistically valid sample. In other words,
18 you follow the rules you -- you could have a sample
19 error, and the -- the effect of having a sample error
20 is that your conclusions expressed in terms of
21 inferential statistics are incorrect.

22 Q In your opinion, is it important for a sample
23 to be representative of the larger dataset from which
24 it's drawn?

25 A Yes.

David Nolte

1 you're dealing with nonunion members and the starting
2 point being the union databases.

3 I don't know that there's any quarrel about
4 that.

5 MS. McCONNELL: Okay. Why don't we take a
6 break and come back. Do you want to take a lunch
7 break or do you want to go for a little bit longer?

8 THE REPORTER: Do you want to go off the
9 record to discuss that?

10 THE VIDEOGRAPHER: We are now going off the
11 record, and the time is 12:05 p.m.

12 (Lunch recess.)

13 THE VIDEOGRAPHER: We are now going back on
14 the record, and the time is 12:44 p.m.

15 BY MS. McCONNELL:

16 Q Okay. Mr. Nolte, did you devise the -- did
17 you devise the 50-song study?

18 MR. THOMAS: Objection; vague.

19 THE WITNESS: I don't know what you mean by
20 "devise."

21 BY MS. McCONNELL:

22 Q Did you set the parameters of the 50-song
23 study?

24 A By parameters, what I have in mind is the
25 sample size of 50. Is that what you're asking about?

David Nolte

1 Q We can start there.

2 A I did not set the sample size of 50.

3 Q Okay. Did you provide any input on any other
4 starting points for the study, including what -- what
5 general group of titles to pull the 50 songs from?

6 A No.

7 Q Okay.

8 A Well, and the no -- well, hold on a minute.
9 Your -- your question was compound. So the part that
10 I was answering was the last half of your question,
11 not the first half. So I -- let me say the same thing
12 a different way.

13 I was not involved with the sample selection.
14 That would be a more precise way of answering what I
15 was intending just a second ago.

16 Q How -- generally speaking, how would you
17 design a statistical study?

18 A How would I?

19 Q Yes.

20 MR. THOMAS: Objection; overbroad, vague,
21 outside the scope.

22 THE WITNESS: If -- and -- and the sentence
23 starts with "if," so you may not need to do this, but
24 if one decided that they needed to follow the rules of
25 inferential statistics, then one would need to have a

David Nolte

1 versus women are in the world, I'd say -- looking at
2 this, I'd say, well, it looks like 50/50.

3 Now, there's nothing random about it.

4 There's nothing proper about the sample size, but I
5 arrived at an absolutely correct answer. And that's
6 an example that I just did off the top of my head that
7 illustrates what you were asking.

8 Q So is it just by luck, then, that it's
9 representative if it's not random?

10 A No. No. It might be -- my example was
11 probably luck. But when you look at the manner that
12 this -- the 50-title item was -- was selected, I would
13 not say it was luck. I would say -- well, I would not
14 attribute it to luck.

15 Q Okay. Generally speaking, is it accurate to
16 say that sample selection is important to ensure that
17 data is usable for the intended purpose?

18 A If you're going to want to express your
19 conclusions inferentially, then, yes. I -- I have not
20 drawn any conclusions using the tools of inferential
21 statistics so in that sense the answer would be no.
22 I'm not quarreling with the fact that someone might
23 have done a sample in a different way, but that does
24 not mean that what you proposed a second ago is
25 correct.

David Nolte

1 Q You're talking specifically about the 50-song
2 sample again, I'm assuming. But if you're saying that
3 you didn't use inferential statistics to come to your
4 conclusions how are you confident that the 50-song
5 sample is representative?

6 A I've not -- I've not reached any conclusion
7 regarding it being representative. The Fund made the
8 sample. The Fund indicated that in their mind it was
9 random and in their mind it was sufficiently large to
10 accomplish its purpose. And so I did my work with the
11 results of that sample.

12 Q Are you able to extrapolate results on the
13 larger track list based on the 50-song sample?

14 A One can extrapolate it. You will lose the
15 opportunity to do so with the precision and confidence
16 parameter. So I've -- I've not expressed anything
17 with the precision and confidence level because of
18 what you just mentioned. But, yeah, you certainly can
19 extrapolate it, yes. You -- you don't need -- you
20 don't need to use inferential statistics to do an
21 extrapolation.

22 Q Why not?

23 A It's definitionally you don't. I mean, look,
24 look, look, look. Let me give you an example.

25 Let's say we go back -- and this is not luck.

David Nolte

1 I -- you know, we were quarreling about, you know, my
2 luck example with the four people that are on my
3 screen. But let's say instead I say let's do a test.
4 We want to figure out how many fingers each
5 human has. And so I say, okay, everyone put up their
6 fingers and we'll count them and I haven't seen your
7 fingers yet so I don't know what the answers are, but
8 I can tell you I have ten fingers and I'm willing to
9 wager that the other three people I was describing
10 have ten fingers. So then I've got four observations
11 of ten fingers. And I would say, well, based on that,
12 I will extrapolate that humans have ten fingers.

13 Now, there's nothing following inferential
14 statistics, but I don't think anybody is going to
15 doubt the conclusion that humans have ten fingers.
16 And that's an example of what -- how you could do that
17 without using inferential statistics.

18 Q Who devised the 50-song study?

19 A You said who devised it?

20 Q I did.

21 A That assumes that there was a single person
22 that devised it so I -- I -- the Fund was certainly
23 involved in coming up with that, and I'm sure they
24 would say I had some input.

25 Q What input did you have?

David Nolte

1 A I had a conversation with Jenner & Block and
2 Fund representatives about what information the Fund
3 had regarding what happens when they don't use the
4 union data. And they -- this is my characterization.
5 I'm not trying to put words in anyone's mouth.

6 But the impression I got back was, golly,
7 that's an awful stupid question, why would we ever
8 waste our time trying to figure out the impact of data
9 that we know to be valuable and that we use every day
10 of the week.

11 I said, well, because -- and I answered and
12 said, well, that's because that's what the plaintiff
13 thinks you should be doing. They think either the
14 union should be giving away the data for free or you
15 should not be using it. And those are the two options
16 that I think the -- the plaintiff is proposing.

17 And my question is, have you ever really
18 contemplated that, that as a possibility, and they
19 said, no, we just told you that was a stupid question.
20 I said, well, okay, but that's the stupid question
21 that the plaintiffs are asking so maybe we should try
22 to answer their question.

23 And so they went off and did the 50-sample
24 test and it was -- I suspect I was the cause of it
25 initially, although they are the ones that -- that

David Nolte

1 initially did the sample and -- and did the work
2 because that's of course what they do for a living.
3 And then they gave it back to me and I did the work
4 that's reported in my report.

5 So when you say who devised it, I did some of
6 the calculations at the end. And -- and I think I was
7 probably the guy who caused the thing to come up to
8 begin with and they were the ones that implemented the
9 research because they of course have the researchers
10 on staff and I don't research this and couldn't do it
11 near as fast as they can.

12 Q You are aware that there's several instances
13 where the unions don't have session reports for tracks
14 and the Fund needs to do all the research by
15 themselves, right?

16 A I think what you're asking me is, is it true
17 that the 100 percent of the nonfeatured performers are
18 not covered by session reports and -- I think that's
19 what you're asking me. And I think everybody's
20 acknowledged that that's the case.

21 Q Okay. I don't need to know that it's true.
22 I don't need you to answer whether it's true or not
23 because I know that it's true.

24 So my question to you is, were you aware of
25 the fact that the unions don't have session reports

David Nolte

1 you that in the total pool of tracks there are errors
2 that are made even when using union data?

3 A I -- look, I highlighted in a footnote that,
4 you know, no data source is infallible. And that
5 infallibility -- something does not have to be
6 infallible to be valuable. So I don't doubt for a
7 minute that in any information gathering process that
8 a mistake is made. This is still done by humans. Can
9 it be done by computers, computers can make mistakes
10 because the programs can make mistakes.

11 But -- so it's -- but, no, no one has told me
12 that the union data is unreliable or should not be
13 used or had any meaningful error rate to them.

14 Q On page 10 of your report, Table 6, you have
15 heading -- well, most of your headings in this chart
16 have some variation of "supported by union data" or
17 "not supported by union data."

18 As used here, what does "supported by union
19 data" mean?

20 A It means I'm summarizing the information
21 that's on a production number that is in footnote 10.
22 So whatever is intended by that document is what I'm
23 intending.

24 My understanding is that it's just what those
25 English words are saying, that the union data is

David Nolte

1 useful in -- or it has information involving this

2 amount of royalties and -- and participants.

3 Q Did you ask the Fund to collect that database
4 summary that's referred to in footnote 10?

5 A I appreciate that's a simple question. It
6 might frustrate you that I'm not giving you a
7 yes-or-no answer.

8 The -- I had a -- multiple conversations with
9 Fund representatives and I was seeking information
10 regarding union versus not -- nonunion data and I was
11 asking for information that would provide insights in
12 that regard. In that sense I did ask for it.

13 Now, at the same time, they were responding
14 to your discovery, written discovery, and so there was
15 some things where people said, well, that's kind of
16 like what the plaintiffs want for this, or, it's, oh,
17 that's kind of like what was in the Blondell
18 litigation and we think we can get this, that or the
19 next thing and would that be useful. And I said,
20 sure, go ahead and give it to me if useful to -- for
21 whatever the issue, you know, the table has to be
22 produced.

23 So I did ask for this data but it doesn't
24 necessarily make that my idea. It could have been
25 your idea through written discovery. It could have

David Nolte

1 I'm just telling you that the -- the information
2 gathering was an evolving process and I got the
3 information that's summarized in this section of my
4 report.

5 Q Do you know if -- well, strike that.

6 You mentioned the Fund's AS400 system. Do
7 you know how the AS400 system tracks whether or not a
8 participant allocation is supported by union data or
9 not?

10 A I understand there's a field in that database
11 that exists but is not reliable. And -- and...

12 Q Yeah.

13 A So I mean, I -- I know there's been
14 discussion on that topic. But generally I'm not
15 familiar with the detailed workings of that database.

16 Q Okay. And I think that testimony was from
17 Ms. Taub's 30(b)(6) deposition where she said that the
18 AS400 system does have that field but it's not
19 reliable. Is that what you were referring to?

20 A She certainly told me the same thing outside
21 of the deposition.

22 Q Okay. If the report was made, if -- if the
23 report that's attached -- strike that.

24 If the report that's referenced in
25 footnote 10 is created from unreliable data, doesn't

David Nolte

1 that make your Table Number 6 unreliable?

2 A Given -- given your "if" statement, sure.

3 You're -- you basically said if -- if -- if Table 6 is

4 unreliable, isn't Table 6 unreliable? The answer is,

5 sure, it is. I -- it's -- I don't know how this was

6 created.

7 Q Okay.

8 A But I -- I did get the information, and it

9 provides the information that -- that's shown here.

10 The -- the unreliability, however, was that

11 the union involvement or the union data was being

12 significantly understated. So to the extent that

13 Table 6 is impacted by this unreliable field, assuming

14 we're even talking about the same field, and I'm not

15 sure we are, but if we were then all of these numbers

16 for the unions should, in fact, be higher and which

17 would kind of be going the wrong direction from the

18 position the plaintiffs wish to advocate here.

19 Q Is that information based on something that

20 Ms. Taub told you?

21 A No. I'm just telling you that -- that I'm

22 just responding to your "if" questions. I was given

23 this information. I'm not sure how it was compiled.

24 I do know that there was this other piece of data that

25 Ms. Taub described as being unreliable, and I don't

David Nolte

1 their members employed and have retirement benefits.
2 What they receive is the member dues that -- and --
3 and the member's permission to run those retirement
4 plans.

5 Q Okay. I'll leave that one alone.

6 Do you think -- I think you answered this.

7 Do you think that the session reports are
8 eligible for patent protection? I think you said no,
9 right?

10 A I'm not expressing any legal opinions, but
11 I -- I would not expect them to be a patented item,
12 no.

13 Q Would you need to assume that they are a
14 patented item to use the Georgia-Pacific factors in
15 this case?

16 A No.

17 Q Why not? Let's start there.

18 A I would invite your attention to the
19 introductory paragraph to conclusion C, as in cat,
20 where this entire Georgia-Pacific analysis exists. In
21 this introductory paragraph I observe what your
22 question just asked and explain why it is that I'm
23 using the Georgia-Pacific factors.

24 Q You say it's because its "used by analysts to
25 address reasonable royalties with other forms of

David Nolte

1 intellectual property," right?

2 A I do say that, yes.

3 Q Okay. So are you saying that the session
4 reports fall under that umbrella of other forms of
5 intellectual property?

6 A I'm not sure I know what you're referring to.
7 Look, this information has value. If you want to
8 debate that, that's a different series of questions,
9 but I don't think that's what you're asking here.

10 The value is for property that is
11 intellectual. It is not physical, right, it's not
12 like a desk or a chair. So I'm valuing intellectual
13 property and I'm using Georgia-Pacific in order to
14 gain insights because that landmark case has been used
15 on a wide range of intellectual property matters
16 extending past patents, which was its initial purpose
17 or point.

18 Q Okay. So you -- you're aware of courts that
19 have used the Georgia-Pacific factors on other forms
20 of intellectual property?

21 A I don't have any case cites. I -- I expect
22 there are. I can tell you that analysts such as
23 myself will do that. And it's -- it's just a
24 methodology.

25 I don't know what any courts have said that

David Nolte

1 page 21 of your report.

2 For factor number 2, "The rates paid by the
3 licensee for use of other similar [intellectual
4 property]."

5 You note that the Fund has no similar
6 licenses or agreements, right?

7 A Yes, ma'am.

8 Q Okay. So we don't have an example of other
9 rates paid by the Fund for similar intellectual
10 property, right?

11 A Correct.

12 Q Okay. On factor number 3, "The nature and
13 scope of the license, such as whether it is exclusive
14 or nonexclusive, restricted or nonrestricted in terms
15 of territory or customers."

16 Does the service agreement have any language
17 related to whether -- well, A, whether it's a license,
18 and, B, whether it's exclusive or nonexclusive?

19 A Well, the service agreement, as I recall,
20 does not describe it as a license. I'm doing that
21 because of what I told you before, which is the
22 economic substance of it is a royalty for the license
23 of information.

24 And as for it being exclusive or
25 nonexclusive, I -- I don't think the union is

David Nolte

1 remedy that's being sought.

2 So I can't tell you how many of those
3 hundreds have expressed them as reasonable royalty but
4 I'm pretty sure that may be a hundred percent of them
5 when they're expressed in that manner I've used
6 Georgia-Pacific. I don't have a number of what that
7 is other than it's probably all of them.

8 Q You mentioned that you use Georgia-Pacific
9 when the desired conclusion is expressed as a
10 reasonable royalty rate. Wouldn't you agree that
11 there are other alternatives for compensation for the
12 unions instead of what you call a royalty rate?

13 A I probably don't understand your question.
14 But, for example, plaintiffs' contention is that it's
15 for free and so I guess for free means you don't need
16 a royalty rate or anything else. So --

17 Q Couldn't it be --

18 A -- I'd have to agree -- I'm sorry?

19 Q Couldn't it be a flat fee?

20 A You can express royalties as a flat fee.
21 They're not as common, particularly with things that
22 have proven their value. But if -- I've -- I've done
23 royalty valuations where it's been expressed as a flat
24 fee.

25 Q Could you have a subscription fee model

David Nolte

1 instead of a royalty rate percentage?

2 A Well, depends on what the -- how the
3 subscription fee is expressed, but I think what you're
4 saying is that if you could say, well, we're going to
5 charge X cents per amount received per artist, or --
6 or per track, because that's how SoundExchange reports
7 it, I suppose you could do that.

8 You can express royalties in any form you
9 want, whether it's a flat fee, a per unit amount or
10 percentage amount. But ultimately the economics are
11 all the same. Well, you know what, I -- they're not
12 all the same. The risk sharing is different if you're
13 dealing with a flat fee. But if you're dealing with
14 a -- a per unit versus a percentage, you -- you get a
15 kind of -- you could end up in the same direction.

16 Q Do any of the for-profit businesses that you
17 described in your report use a percentage-based
18 royalty rate?

19 A Well, some of them don't describe it as a
20 royalty, but clearly there are some fees being paid as
21 a percentage. I -- I would say all of them are based
22 on quantity of some sort, so whether they express them
23 as a percentage, there's no question that the use of
24 intellectual property or the fee for the use of
25 intellectual property increases as the usage goes up.

David Nolte

1 And -- and that's true across the board.

2 Q Which -- which companies, starting on page 14
3 of your report, charge percentages based on usage?

4 A Well, I've already told you it really doesn't
5 matter too much whether you do it as a percentage.
6 I'm expressing it as a percentage here because that's
7 the way the agreement was crafted.

8 But in any event, I'll be happy to go through
9 this and give you my -- my reactions.

10 The mailing list industry is not expressed as
11 a percentage because the mailing list industry does --
12 does not wish to risk share with their licensee. So
13 this is an example of where the risk -- they're --
14 risk sharing's just the opposite of what happens here.

15 And the mailing list gets paid a flat fee for
16 a given size list so you could express that this --
17 the fee is at per unit or as a flat fee. But
18 generally, if it's a bigger list, it's going to get
19 more money so the per unit fee is going to be more
20 sensible.

21 Q Can I cut you off and go to number 2, I'm
22 sorry, because you mentioned risk sharing, and I'm
23 wondering what is the risk sharing that you were
24 describing in terms of the mailing list industry?

25 A Well, the -- the mailing list industry says

David Nolte

1 we're not going to charge you less if you don't
2 generate sales, it's your problem to generate sales,
3 so we're going to charge you an amount of money and we
4 get the money whether you're successful or not.

5 Q Okay. Sorry, I cut you off. You were going
6 to give more examples?

7 A Okay. Well, the next one is Google and
8 Facebook. Google, you know, I'm not familiar with --
9 with the details of their pricing, and they're
10 probably evolving, but most of what Google does, I
11 believe, is on a -- a per impression basis. So you
12 get paid for X number of impressions.

13 I -- I'm not telling you that Google doesn't
14 have other means of contracting. We probably could
15 read about that in their annual report.

16 Facebook I'm guessing is the same way, but
17 again, I'm not -- it's not important -- I'm trying to
18 answer your question, but it's not important to my
19 conclusions. But whatever the answer is you could
20 probably get from the annual report.

21 Fair Isaac's has a -- as I understand it, a
22 number of -- of license arrangements, but it's -- it's
23 all going to be based on -- on usage. So if -- if
24 you're running more reports, you're going to charge --
25 get charged for money. And I just don't know how

David Nolte

1 their contracts are expressed. But again, I'm sure
2 that you -- you could probably read a paragraph in the
3 annual report if that was of primary significance to
4 you. It, by the way, was not a primary significance
5 to me.

6 Nielsen runs most of their contracts unique
7 to a -- a user. So if you contact Nielsen, they want
8 to know what are you going to use it for and who are
9 you and how many reports are you going to get and then
10 they give you pricing. Again, though, it's based on
11 anticipated usage and who you are.

12 Q It's not based on the profits that you are
13 anticipating to get from usage?

14 A Oh, yeah, absolutely. One of the things
15 that's interesting about all of these is that none of
16 them do the -- the people who -- who are getting the
17 fee, you know, are -- are they changing the fee based
18 on, you know, whether you're successful or not. So --
19 and -- and -- and that's -- that's the -- the genesis
20 of the comment that I've got later in the report.

21 So Google doesn't say we're only going to
22 charge you if you're successful in making a sale. We
23 give you the impression, you pay for it, whether you
24 can make a sale or not is your problem. And the same
25 thing's true I think for pretty much all of these.

David Nolte

1 to keep your data and not have to pay you because
2 there was an oopsy somewhere, and we're going to hold
3 you to that oopsy, even though that clearly was not
4 the intentions of the parties, that does not change my
5 conclusion.

6 The conclusion under that set was someone
7 meaning the Fund is taking advantage of an oopsy by
8 the part of the unions. And -- and the fact that --
9 that something -- something may be an oopsy does not
10 change its economic value. So my conclusions are not
11 oriented to what is legally permissible under a
12 contract. It is instead what is a reasonable value in
13 consideration for what's been exchanged between the
14 parties.

15 Q Haven't you interpreted the contract by
16 calling it a license?

17 A No.

18 Q There's nowhere in the contract that says
19 that it's a license, right?

20 A I don't have to call it a license. Look,
21 I'm -- I'm simply saying that there is methodologies
22 available for coming up with an economic answer or a
23 valuation conclusion and -- and we can look at that by
24 realizing that this is expressed as a percentage.

25 I don't know that you would change the answer

David Nolte

1 at all if someone said, I'm going to give a ruling
2 that says the word "license" has to be omitted from
3 Nolte's report. It's just a ruling, says "redacted."
4 Nolte can call it something else, but he can't call it
5 a license. He can call it a kibitzer bong. So we're
6 going to call -- you can't call it a license, he can
7 call it whatever he wants, if it's a kibitzer bong,
8 fine.

9 I think I could rewrite the report, take out
10 the word "license," insert the word "kibitzer bong"
11 and I'm not sure any conclusions are going to be
12 changing because my conclusions are economically
13 based, not based upon on a legal interpretation of the
14 word "license."

15 Q Doesn't it need to be a license for you to
16 say that the unions are entitled to a royalty for use
17 of it?

18 A Again, you know, I -- I've done numerous
19 assignments where I've looked at the reasonableness of
20 royalties. I've -- and I'm -- I'm -- that's how these
21 types of agreements are oftentimes expressed.

22 But if someone says, no, no, no, you can't
23 call it a royalty, it has to be a service fee, if you
24 don't call it a service fee, then it can't be right.
25 Fine. Run through the report, we can take out the

David Nolte

1 word "royalty," we can put in the word "service fee,"
2 if that's the only thing that's differentiating the
3 parties. I'm not sure it's going to change anything.
4 I'm -- I'm simply describing it as -- as a
5 royalty and as a license because that is the language
6 of business that is typically used for this type of
7 transaction. If you or the other parties or the Court
8 decide that they don't want to use that language, I
9 don't think -- I'm quite sure it doesn't matter.

10 Q When you use a patent without a license you
11 can be sued for infringement, right?

12 A You can.

13 Q And that's the same for copyright and
14 trademark?

15 A You can.

16 Q So no matter how you come into possession of
17 those assets you can be restricted by law for using
18 them without permission, right?

19 A That's correct.

20 Q And that's why you need to license the asset?
21 So that you don't get sued?

22 A Well, maybe that's the way a lawyer would
23 express it. But that's not how I would express it. I
24 would express it that if you owned someone else's
25 property you should pay fair value for it. And -- and

David Nolte

1 A Are you asking me why the parties agreed to
2 3 percent?

3 Q No. Why do you think a 3 percent fee is
4 reasonable as opposed to a different number?

5 A Well, 3 percent was the fee that I was asked
6 to evaluate the reasonableness of. The parties had
7 agreed to that 3 percent fee years before I was
8 employed.

9 Q Would a 4 percent fee be reasonable?

10 A That was not my assignment and not the deal
11 so I didn't conduct an assignment based on 4 percent.
12 I conducted an assignment based on 3 percent.

13 Q Okay. As used here in conclusion number 3,
14 does reasonable refer to reasonable from the Fund's
15 perspective or reasonable from the unions'
16 perspective?

17 A Okay. Now I -- I really should follow your
18 question because you've -- you're quoting something
19 specific and I don't know what you're quoting. I'm
20 not quarreling with it. I just -- I just don't know
21 where you are. You say number 3.

22 Q Yeah.

23 A What page?

24 Q Page 13.

25 A 13:

David Nolte

1 that you spoke to?

2 A You know, a lot of conversations merge
3 together so I could be wrong on this, but I believe
4 that conversation occurred in one in which Ms. Taub
5 and Ms. Sandell were involved. But I -- I could be
6 wrong.

7 Q Have you -- well, strike that.

8 Couldn't the Fund implement an
9 electronic-type system at the type of recording to
10 collect session data for all tracks recorded in 2021
11 and going forward?

12 A You're asking me whether such a system is
13 technologically feasible?

14 Q Yeah.

15 A I suspect it is.

16 Q In the course of preparing your report did
17 you consider what the cost of doing something like
18 that would be for the Fund?

19 A I did consider that.

20 Q Okay. How much do you think a system like
21 that would cost?

22 A Well, I don't have a number. I do know that
23 there's an issue of -- of basically investment
24 capital, that such a system would likely cost
25 millions. I don't have an exact number. But it's --

David Nolte

1 it's -- this is not petty cash. And so who's going to
2 pay for it.

3 The Fund is effectively a passthrough
4 vehicle. It gets money and it's supposed to pay that
5 money to others. I don't think there's a provision
6 where the Fund gets to say, you know what we'd like to
7 do, I'm sure you guys won't mind, we're going to take
8 multiple millions of your dollars and we're just not
9 going to give it to you, and the reason we're not
10 going to give it to you is we're going to invest in
11 this really slick computer system, you'll love it, and
12 the guys later who aren't getting -- who aren't
13 participating right now, they're going to like it a
14 lot because it will save money later and you're going
15 to pay for it now.

16 I don't want to be the one responsible for
17 that recommendation because that would -- that would
18 be generating your next lawsuit. And so I don't know
19 how the Fund's going to do that. It -- it may be
20 technologically feasible but that does not mean it's
21 practical.

22 Q Isn't that what the Fund is doing now, giving
23 \$1.5 million approximately per year to the unions for
24 maybe data that goes back to 1940 that you've shown us
25 helps some people get their participant --

David Nolte

1 participation and not others?

2 A That is exactly not what the Fund is doing.

3 The Fund is not taking money from one group of

4 participants to pay for future generations. They are

5 instead saying a percentage reduction is reasonable

6 and appropriate because it significantly improves the

7 accuracy of the information and is a modest charge

8 relative to the rest of the amounts that are

9 appropriately being charged to these participants.

10 It is a pay-as-you-go system, which is

11 exactly the opposite of, let's invest millions of

12 dollars of someone else's money that -- of the current

13 participants' money so that future generations could

14 impact it.

15 Look, if Mr. Risto wants to personally fund

16 this, I think he should talk to the Fund. But I'm

17 quite sure that Mr. Risto doesn't want to personally

18 pay for it, and I don't know anybody else that's

19 waiting in that line.

20 Q I don't know -- I don't know -- know why

21 you're including that in your answer because I'm not

22 sure --

23 A Because it's relevant. I'll --

24 Q No, it's not.

25 A -- tell you why, because it's absolutely

David Nolte

1 DECLARATION UNDER PENALTY OF PERJURY

2

3 I, DAVID NOLTE, do hereby certify under
4 penalty of perjury that I have read the foregoing
5 transcript of my deposition taken on Tuesday,
6 April 27, 2021; that I have made such corrections as
7 appear noted herein in ink, initialed by me; that my
8 testimony as contained herein, as corrected, is true
9 and correct.

10

11 Dated this ____ day of _____, 2021,
12 at _____.

13

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17

DAVID NOLTE

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David Nolte

1 CERTIFICATE

2

3 I, SHARI BOLTON, Certified Shorthand
4 Reporter, No. 9291, do hereby certify that prior to
5 the commencement of the examination, the Deponent was
6 duly remotely sworn by me to testify to the truth, the
7 whole truth and nothing but the truth.

8

9 I DO FURTHER CERTIFY that the foregoing is a
10 verbatim transcript of the testimony as taken
11 stenographically by me at the time, place and on the
12 date hereinbefore set forth, to the best of my
13 ability.

14

15 I DO FURTHER CERTIFY that I am neither a
16 relative nor employee nor attorney nor counsel of any
17 of the parties to this action, and that I am neither a
18 relative nor employee of such attorney or counsel, and
19 that I am not financially interested in the action.

20

21



22

SHARI BOLTON

23

Certified Shorthand Reporter, No. 9291

24

25

Dated: _____